

**STATE OF MAYFLOWER DISTRICT COURT
DISTRICT OF NEW HAVEN**

The STATE of Mayflower

-against-

Grax_MARLEY
Defendant

Case No. CR-92659-23

Qwerty, District Judge

**OPINION AND ORDER ON MOTION TO DISMISS ACTION
FOR WANT OF PROBABLE CAUSE**

The State was represented by Operator Taxi, Esq. Assistant Attorney-General;

Mr Easybxm appeared for the defendant.

Before QWERTY, District Judge:

I. Background

The prosecution at our bar today concerns a certain Grax Marley (“the defendant”). The State’s information laid before the court alleges that Marley committed a second-degree murder and an assault with a deadly weapon. Arrangements were made for process to be served upon the defendant at some time around the middle of the month of May 2023, although by the beginning of June the court had received no return of such service. We then directed our assistant, Fliply27, to inform the defendant of the prosecution outstanding against him on or around the 7th June 2023, and the said individual forthwith presented himself before us.

We arraigned the defendant on the 9th June 2023, pleading not guilty on all counts. Notice of appearance on behalf of the defendant was filed on the 8th prior to arraignment. On the 11th June 2023 counsel for the defendant presented before us a motion to dismiss the prosecution for want of probable cause. In reply, counsel for the government tenders

before us the argument that our direction to issue process comprises *ipso facto* an implication of the view that probable cause has been met.

II. The motion

Before consideration the substantive merits of the claim, it appears expedient to the Court to contemplate the character of the argument in law by which the defendant seeks dismissal. Whilst counsel cites in doing so a line of our case-law pointing to judicial dismissal of criminal prosecutions brought in default of probable cause, he only appears to do so in support of his argument that the issuance of process itself ought to be regarded as vitiated by its purported violation Mayfl. R. Crim. Proc. 2(3), and accordingly we do not see fit to prematurely examine the question of whether or not probable cause exists or not at this present juncture — whilst the parties are free to contest otherwise, for the purposes of this present motion, we assume the documents produced at our bar to be substantively sufficient in establishing probable cause.

Accordingly, the question before the court today is one of pure procedure — we must firstly ask ourselves whether or not this court erred, as the defendant moves for us to find, in failing to make a determination of probable cause and, secondly, even if so, whether or not such failing is in and of itself sufficient so as to merit dismissal of this action. Because we do not find a violation of the Rules of Criminal Procedure, we furthermore decline to make any observations upon the latter question.

The operative provisions of the Mayflower Rules of Criminal Procedure cited by counsel for the defendant mandate that:

[...] No information shall be presented until affidavit has been made by some credible person charging the defendant with an offense. The affidavit shall be filed with the information. It may be sworn to before the state or county attorneys who, for that purpose, shall have power to administer the oath, or it may be made before any officer authorized by law to administer oaths. No judge nor clerk shall summon a defendant until probable cause is met. Should a judge determine that probable cause exist

to summon the defendant, a summons should be issued commanding their presence.

Whilst counsel forcefully points to authority highlighting the importance of probable cause in the early stages of criminal proceedings, the essence of his argument appears largely to reside in his claim that no determination was made upon the question of probable cause prior to issuance of process. He does not, or so it would seem, appear to contest the existence judicial scrutiny of the charging documents, and thus he fails, in our view, to point convincingly to any line of precedent requiring an official declaration of order consisting of a finding of probable cause. We hold instead that the absence of formal paperwork does not an *ipso facto* violation of a person's right to freedom from seizure¹, nor does its scrupulous observance constitute in and of itself a sufficient protection, for “[t]here is nothing in the Fourth Amendment that requires us so to exalt formalism over substance.” *Andresen v. Maryland* 427 US 463, 478 n. 9 (rejecting “summarily” petr’s argument that the government’s failure to move warrants into evidence violated his 4th Amendment rights). Likewise, on a separate occasion, the same court held that whilst in that particular case, specific reasons were merited, “[n]o interest would be served by formalism” in the determination of the existence of probable cause to hold a parolee pending revocation of parole proceedings, for the “informality” of the proceedings were not of a nature so as to “lessen the utility of this inquiry in reducing the risk of error.” *Morrissey v. Brewer*, 408 US 471, 487 (1972). Accordingly, we decline to entertain the defendant’s proposition that only a formal declaration² suffices under the Rules of Criminal Procedure.

We lastly observe that nothing in this present opinion and order should be seen as making any determination on the substantive question of

¹ Incidentally, we doubt whether or not the Constitutional probable cause standard is applicable in the case of the defendant’s summons in the first place, for he is, of course, free in his movements and not retained against his will — 4th Amdt. protection applies when a restriction of freedom (especially movement) occurs, see *Brendlin v. California*, 551 US 249, 254 (2007), quoting in part *Florida v. Bostick*, 501 U.S. 429, 434, 111 S.Ct. 2382, 115 L.Ed.2d 389.

² Nor, incidentally does the defendant outline what form of declaration or finding of probable cause would be sufficient.

the existence of probable cause, which we need not make at this present juncture.

III. Conclusion and Order

Having regard to the above, the ORDERS as follows;

- The motion to dismiss is **denied**;
- We **decline** to adjudge any matter relating to whether or not probable cause has been established and reserve jurisdiction thereupon for a later time;

It is so ORDERED,

20th June 2023

/s/NewPlayerqwerty